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C O N F I D E N T I A L SECTION 01 OF 04 MEXICO 001308

SENSITIVE
SIPDIS

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TAGS: [PGOV](#) [PREL](#) [PINR](#) [MX](#)

SUBJECT: UNEVEN PROGRESS ON MEXICO'S SECURITY REFORM
LEGISLATION

REF: A. 08 MEXICO 3099

[1](#)B. MEXICO 1278

[1](#)C. MEXICO 982

[1](#)D. MEXICO 01224

[1](#)E. MEXICO 873

Classified By: Political Minister Counselor Charles V. Barclay.
Reason: 1.4 (b), (d).

[1](#)1. (C) Summary. Mexico's Congress, in a burst of activity before the legislative session closed on April 30, approved a number of key security initiatives that had been left pending since the last session closed in December, including narcomenudeo, asset forfeiture, the Federal Police law, and the law for the Attorney General's Office (PGR. A number of other security-related laws, however, will be left until the next session starts with a brand new Chamber of Deputies in September, including four packages submitted to the Senate by President Calderon on April 23. Congress' security accomplishments this session appear to be a mixed bag, and their results, as always, will depend on how they are implemented on the ground. End Summary.

CONGRESS' ACCOMPLISHMENTS

[1](#)2. (C) Despite an increasingly acrimonious political atmosphere in the run-up to the July elections and in the midst of the H1N1 flu crisis, Mexico's Congress, in a final flurry of activity before the legislative session closed on April 30, approved -- sometimes with significant changes -- a number of key security initiatives that had been left pending since the last session closed in December. Amongst the most important reforms are narcomenudeo, which defines punishment for small-time drug dealers, asset forfeiture, the Federal Police law, and the law for the Attorney General's Office (PGR).

NARCOMENUDEO

[1](#)3. (C) The new narcomenudeo law clearly defines the distinction between consumers, drug dependency and trafficking, but waters down provisions that impose mandatory treatment for consumers found to be in possession of small quantities. Unlike the Calderon administration's first version of the bill (ref a), the public prosecutor and health authorities can only recommend a treatment option to an individual the first two instances in which he or she is found to be in possession of

an illegal drug. (However, if the individual demonstrates clear signs of drug dependency, either authority can remand him or her to a treatment program.) On the third occasion, treatment is mandatory. (ref b). The criteria for "dependency" is poorly defined. The bill also raised the maximum amount of permissible marijuana to five grams and fixed the amount of opium at two grams, cocaine at 500 milligrams, and heroine at 50 milligrams. Persons who are found to possess amounts that exceed these limits will be determined to be street traffickers and could face 4 to 8 years in prison. The bill seeks to establish a division of prosecutorial labor between state and federal law enforcement authorities, giving the former jurisdiction over the prevention of drug abuse and street sales, while reserving for the latter authority to investigate and prosecute larger sales and organized-crime related transactions.

14. (C) The bill generated considerable controversy in Congress and sparked debates as to the efficacy of a wholesale legalization of some drugs, namely marijuana. Senator Tomas Torres told Poloff that some legislators had serious reservations about aspects of the legislation; nevertheless, it passed in the Senate with 87 votes and in the Chamber of Deputies with 184 yes to 87 no. Some state officials have also expressed both publicly and privately their concern that they are ill-equipped to handle their new responsibilities. State prosecutors in Monterrey told Poloffs, for example, that their expanded duties in dealing with narcomenudeo do not appear to come with additional funding from the federal government.

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ASSET FORFEITURE -----

15. (C) The long-awaited asset forfeiture bill is intended to enhance the government's ability to target the ill-gotten financial gains of organized crime groups and was approved unanimously on April 30 by the Senate and by the Chamber with 317 yes and 2 no votes. The law allows authorities to initiate asset forfeiture proceedings in order to seize property from suspected drug traffickers and other criminals before securing a criminal conviction. Third party holders of illicit goods can also be the subject of the seizure process to prevent organized crime groups from hiding assets in the names of friends or family members. Despite being ready for approval early this session, according to congressional contacts, probably reasonable objections from opposition parties -- namely the PRI -- held the bill up in committee. Last minute changes to the bill included increased protections for innocent third parties, as well as the creation of a "Specialized Asset Forfeiture Judge" within the federal court system (ref c).

THE NEW FEDERAL POLICE -----

16. (C) The new bill passed on April 30 and aims to convert the Federal Preventive Police, or PFP, into a new force known as the Federal Police. The Federal Police will remain under the management of the Public Security Secretariat (SSP), headed by Genaro Garcia Luna. It will have expanded investigative and intelligence-gathering powers, including the ability to run wiretaps and use undercover operations in the course of its "preventative duties." Proponents say that the new force resolves a major challenge facing the PFP which lacks the ability to carry out investigations and gather intelligence, and is unable to employ various surveillance techniques. PGR's Oscar Rocha told Poloff that the Federal Police's new role will help the PGR prosecute cases, if for no other reason than the force's sheer numbers. Garcia Luna and his SSP cohorts told visiting diplomats on May 8, for example, that the Federal Police will be able to request wiretaps directly from judges, who will have to respond to the request in 12 hours. They also explained that the

Federal Police is looking to play a greater role in investigations -- serving when necessary as an "auxiliary" to the PGR -- and will have a key part in securing the crime scene and conducting initial evidence-gathering and investigations. The law also expands the force's authority in airport, customs, and even internet security, and will allow it to employ state and municipal police officers and other relevant personnel when required.

17. (C) Garcia Luna has been clear that he is looking for U.S. help in training some 9,000 SSP investigators to comply with the new legislation (ref d). He was less clear in explaining the exact division of labor between the PGR's new Ministerial Police, purportedly charged with investigation, and the Federal Police's new "preventative" aspirations. He noted that when a crime occurs, the force may be the first to investigate and secure the crime scene, but that the PGR will take over from there and will employ the force on what is likely to be a more ad hoc basis (see septel for additional reporting on police reform efforts).

PGR REFORM

18. (C) Amongst other items, the new PGR law looks to create new organizational structures to better coordinate work between PGR entities, apply stricter vetting standards to employees, and create a new Ministerial Police that will focus on investigations and will purportedly substitute for the PGR's current Federal Investigative Agency (AFI) after President Calderon's efforts to merge the AFI and the PFP failed (ref e). As the PGR is also in the process of standing up its own special wiretapping units, it remains to be seen how the PGR and SSP play together in the sandbox. Oscar Rocha stressed to Poloff the need to improve vetting standards within the PGR -- which has been wracked with high level corruption scandals -- and said that during internal investigations, disturbing trends were uncovered, such as

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federal PGR officers in various states who had not taken a polygraph test in over three years. Ironically, when Poloff asked the federal PGR official in Monterrey how often his subordinates were tested, he replied, "Oh, about once every three years." The new law establishes a maximum of one year between tests.

STILL PENDING

19. (C) Despite Congress' quick work at the end of this session, a number of security-related laws will be left until the next session starts with a brand new Chamber of Deputies in September. Amongst these pending items are four packages submitted to the Senate by President Calderon on April 23 -- only a week before Congress closed -- that deal with a variety of military and public security issues. These include changes to:

--MILITARY CODE OF JUSTICE: This would impose 30 to 60 year prison sentences for military deserters who joined the ranks of organized crime, as well as 15 to 60 year sentences for members of the military who worked against the Armed Forces or provided strategic information to criminals.

--NATIONAL SECURITY LAW: The reform looks to regulate the military's role in the fight against organized crime, which includes the creation of a "declaration of the existence of a threat to domestic security," similar to a state of emergency, which would justify and codify the Armed Forces' participation in anti-crime efforts. Such a declaration would require the approval of the National Security Council -- which includes the President, Secretary of Government, Secretary of Defense, Secretary of Public Security, Finance Secretary, Public Service Secretary, Foreign Relations

Secretary, Communications and Transportation Secretary, the Attorney General, and the Director of CISEN, Mexico's intelligence organization -- and Congress' Bicameral National Security Committee. The proposal also calls for granting CISEN greater powers to tap telephones in cases including conspiracy to commit espionage, sabotage, terrorism, and rebellion.

--FIREARMS AND EXPLOSIVES LAW, FEDERAL PROCEDURAL PENAL CODE, ORGANIZED CRIME LAW: The bill would ban ownership of specific types and quantities of ammunition and would impose stiffer sentences in case of violation. It would also strengthen punishment against groups of people who possess illegal weapons or ammunition in an attempt to crack down on organized crime. Furthermore, the law calls for stiffer penalties against public officials found to be complicit with gunrunning or who illicitly possess illegal weapons.

¶10. (C) Calderon's last minute submission of these proposals has engendered considerable controversy amongst the political classes. Leaders from opposition parties have said that the reforms, particularly the change to the National Security law, require significant public discussion and examination before they can be considered for passage. Senator Torres dismissed Calderon's proposal as being a purely political move designed to boost his profile and hone his law and order credentials prior to the July elections.

COMMENT

¶11. (C) Congress' security accomplishments this session appear to be a mixed bag. The asset forfeiture law, for example, should provide the government with a powerful new tool in fighting organized crime in Mexico. Colombian diplomats have cited their own similar law as one of the most important advances in their country's struggles. The narcomenudeo bill, meanwhile, has been weakened since its first iteration, suggesting that Calderon and his National Action Party (PAN) may have compromised by favoring political expediency over perfect legislation in order to get the bill passed. The impact of the Federal Police law and the PGR reforms will depend heavily on how they are implemented and the interplay between the two often feuding organizations.

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¶12. (C) With the July elections staring them in the face and a health crisis looming, Mexican congressional members appeared to move quickly on the most key bills in order to secure their passage before the end of the term. Some legislators have complained that such alacrity led to decreased discussion, examination, and debate, resulting in less effective laws. While most of the initiatives have been languishing in Congress long enough to provide for sufficient study time, the proof, as always, will be in how the laws function and are enforced on the ground in Mexico. Visit Mexico City's Classified Web Site at <http://www.state.sgov.gov/p/wha/mexicocity> and the North American Partnership Blog at <http://www.intelink.gov/communities/state/nap/> / BASSETT